

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 96-235-W/S - ORDER NO. 96-859  
DECEMBER 13, 1996

IN RE: Application of Carolina Water Service, ) ORDER DENYING  
Inc. for Approval of a Transfer of the ) ISSUANCE OF  
I-20 and Lake Murray Systems to the ) CERTIFICATE OF  
Town of Lexington, South Carolina. ) PUBLIC INTEREST

This matter comes before the Public Service Commission of South Carolina ("the Commission") on the Application filed by Carolina Water Service, Inc. ("CWS" or "the Company") in which CWS requested the Commission to approve the transfer to the Town of Lexington, South Carolina ("the Town") of water distribution, water storage, and wastewater collection systems and certain related real and personal property which are used for the distribution and storage of water and the collection of wastewater in certain subdivisions in the Company's I-20 service area and in the Company's Lake Murray service area. The Company's Application was filed pursuant to S.C. Code Regs. 103-504 and 103-704 (1976).

By letter dated July 19, 1996, the Commission's Executive Director instructed CWS to publish a prepared Notice of Filing, once, in newspapers of general circulation in the area affected by the Application. The Executive Director also directed the Company to furnish a copy of the Notice of Filing to each customer. The Company complied with the instructions of the Executive Director

and supplied an Affidavit of Publication and a Certificate of Service as proof of compliance. The purpose of the Notice of Filing was to inform interested persons of the Company's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Petitions to Intervene were filed by Midlands Utility, Inc. ("Midlands"); the Consumer Advocate for the State of South Carolina ("the Consumer Advocate"); Concerned Citizens Against Carolina Water, Inc. ("CCACW"); Brenda Bryant; B. Reed Bull, Jr.; and W.J.S., Inc. ("W.J.S").

On September 30, 1996, the Commission held a public night hearing at the Oak Grove Community Center in Lexington County, South Carolina. The purpose of the night hearing was to allow customers of CWS in the I-20 and Lake Murray service areas to present their views to the Commission regarding the Company's Application.

On November 6, 1996, at 10:30 a.m., the Commission convened a public hearing in the Commission's hearing room at 111 Doctors Circle in Columbia, South Carolina. The Honorable Guy Butler, Chairman, presided. CWS was represented by Robert T. Bockman, Esquire; Midlands and W.J.S were represented by Frank R. Ellerbe, III, Esquire; the Consumer Advocate was represented by Elliott F. Elam, Jr., Esquire; Concerned Citizens was represented by Jonathan Harvey, Esquire; and Brenda Bryant and B. Reed Bull, Jr. each appeared pro se. At the beginning of the hearing, an attorney from the Office of the Attorney General for the State of South Carolina

("the Attorney General") stated an oral Motion to Intervene. Counsel for the Attorney General stated that by inadvertence the Attorney General's Office failed to file a Petition to Intervene in these proceedings. The Commission granted the Attorney General's Motion to Intervene, and the Attorney General's Office was represented by Assistant Attorney General Christie Barrett.

In support of its Application, CWS presented the testimony of Carl Daniel, Regional Vice President for several operating subsidiaries of Utilities, Inc., the parent company of CWS, and Sidney F. Varn, Jr., Director of Public Works and Engineering for the Town of Lexington. At the request of the Consumer Advocate, CWS also made available to testify Carl Wenz, Vice President - Regulatory Matters of Utilities, Inc. Midlands presented the testimony of Keith Parnell, Operations Manager of Midlands. CCACW called as witnesses Jodi Steigerwalt, Director of Business Filings for the Office of the Secretary of State for South Carolina; Donna Morrow; L.C. Greene, Town Administrator for the Town of Lexington; Mike Burkhold of Burkhold Planning and Management; Brenda Bryant; and Keith Murphy, Regional Director for CWS in South Carolina. Brenda Bryant also testified as an individual intervenor. B. Reed Bull, Jr. also testified.

#### APPLICABLE LAW

S.C. Code Ann. Reg. 103-504 (1976) provides in relevant part that "[n]o existing public utility supplying sewerage disposal to the public ... shall hereafter sell, acquire, begin the construction or operation of any utility system, or of any

extension thereof, without first obtaining from the Commission a certificate that the sale or acquisition is in the public interest ... " (Emphasis added.)

S.C. Code Ann. Reg. 103-704 (1976) provides in relevant part that "[n]o existing public utility supplying water to the public ... shall hereafter sell, acquire, begin construction or operation of any utility system, or of any extension thereof, without first obtaining from the Commission a certificate that the sale or acquisition is in the public interest ..." (Emphasis added.)

#### DISCUSSION

The question before the Commission in this case is whether the sale of the CWS water distribution and wastewater collection systems, and associated property, in the Company's I-20 and Lake Murray subdivisions is "in the public interest."

Numerous customers from the I-20 and Lake Murray service areas appeared before the Commission and offered testimony at the night hearing and the hearing held at the Commission. The customers who appeared before the Commission were strongly opposed to the proposed transfer to the Town of Lexington. A common complaint or concern from the consumers was the prospect of the Town of Lexington setting rates for water and sewer. The I-20 and Lake Murray services areas are beyond the municipal limits of the Town of Lexington. Rates for water and sewer service provided by the Town of Lexington are set by the Lexington Town Council. The customers in the present CWS I-20 and Lake Murray services areas would not have a representative or councilman on the Lexington Town

Council. Based on the testimony presented, the customers are concerned about a lack of representation on the town council when it comes time to set rates. Certainly, the customers could appear before the town council and express their opinions, but the customers are very concerned that they have no influence, such as by vote, over the town council.

The Company presented testimony that the Town of Lexington had agreed to "freeze" or hold the present rates for a period of 12 to 18 months. While the Commission has no reason to doubt that the Town will hold its rates for that period, the Commission is also aware that it has no authority over the Town to enforce this "freeze" on rates. Further, the Commission is concerned about what would happen to the rates after the "freeze" expires. According to the Company's presentation, the Town asserts that the rates may go down after 18 months. The Town asserts that enlarging the customer base will allow the Town to spread the costs further and that economies of scale will allow the Town to reduce rates. However, with regard to the CWS service area, neither the Town nor CWS has presented a feasibility study or rate study to support this testimony. Other than an assurance from the Town that it will freeze rates for a period of 12 to 18 months, CWS has not provided the Commission with any reliable information regarding what will happen after that initial 12 to 18 month period.

The prospect of higher rates was also a significant concern of the consumer witnesses. According to the testimony of several consumer witnesses at the night hearing, the Town's "out-of-town"

rates will result in increased bills from what they are currently paying. Donna Morrow testified that the Town's "out-of-town" rates would result in an immediate increase in her water and wastewater bills.

The Commission notes with interest the results of the balloting of customers in the I-20 and Lake Murray service areas. Pursuant to Commission Order No. 96-694, dated October 7, 1996, the Commission ordered the customers in the I-20 and Lake Murray service areas to be balloted to determine the wishes of the customers regarding the proposed transfer. Of the completed ballots returned to the Commission by the deadline, 61% opposed the transfer. The Commission also notes that not one customer testified before the Commission in support of or to speak in favor of the transfer.

Additionally, the Commission is concerned about the uncertainty of the effect of the transfer upon the customers of CWS who are outside the I-20 and Lake Murray service areas. CWS has made no showing as to the effect or potential effect on the remaining CWS customers from the loss of the customer base from the transfer of the I-20 and Lake Murray services areas. The Consumer Advocate through his cross examination elicited what the Commission feels demonstrates uncertainty as to what may be experienced by the remaining CWS customers. This uncertainty leaves the Commission with questions as to whether the remaining customers would be subjected to severe upward pressures on their rates.

The Commission is aware that CWS has some of the highest rates among regulated water and wastewater utilities in the state. Mrs. Bryant offered testimony that the rates charged by CWS are among the highest in the state. The Commission is also aware that CWS is one of the largest water and wastewater utilities in the state in terms of number of customers. Generally, economies of scale are such that a company with a large number of customers should be able to serve those customers at lower costs than a small company with a small number of customers. Based on the comparison of rates to the number of customers, economies of scale do not appear to be working in favor of customer in the case of CWS. Furthermore, CWS has not attempted to make any demonstration on what impact the proposed transfer would have on the customer base remaining with CWS after the transfer. To sever approximately 3,000 customers from the present CWS customer base would significantly alter the customer base which could have a severe impact on the remaining customers.

#### CONCLUSION

The Commission, vested with the power and jurisdiction to supervise and regulate the rates and service of every public utility in this State pursuant to S.C. Code Ann. §58-3-140 (Supp. 1995), is the duly constituted agency to determine whether the proposed transfer is "in the public interest." In making its determination, the Commission must consider all interested parties to the transaction, which in this case includes the Company, the Town of Lexington, and the customers of CWS, which necessarily includes those customers who are subject to the transfer and those

customers who would remain with CWS after the transfer. As direct financial beneficiaries of the transfer, CWS and the Town desire approval of the transfer. The consumers who appeared before the Commission to present testimony were all opposed to the transfer.

Upon careful consideration of this matter, the Commission is left with several areas of concern. The Commission is concerned that the customers in the I-20 and Lake Murray service areas would not have representation in rate setting matters. The Commission is concerned that as a result of the transfer, the customers of the I-20 and Lake Murray service areas would face higher bills than what they are currently paying. That concern is further increased with the uncertainty of what may happen to those customers after the 12 to 18 month "freeze" on rates that the Town has proposed. Also of concern to the Commission is the effect of the transfer on the CWS customers outside the I-20 and Lake Murray service areas; CWS has not adequately addressed how its customers outside the I-20 and Lake Murray services areas would be affected by the transfer to the Town.

As the Applicant requesting approval of the proposed transfer, CWS has the burden of proof to demonstrate that the transfer is "in the public interest." Based on the record before the Commission, the Commission finds and concludes that the Company did not meet its burden of proof in establishing that the transfer is "in the public interest." Therefore, the Commission cannot issue a certificate that the sale is in the public interest.

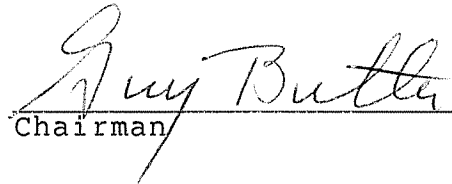


IT IS THEREFORE ORDERED THAT:


1. The Commission cannot issue a certificate that the proposed sale is in the public interest as required by S.C. Code Ann. Reg. 103-504 and 103-704 (1976).

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Deputy Executive Director

(SEAL)